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REMARKS

Applicants hereby add new claims 37-46. Accordingly, claims 1-46 are pending in the present application.

Claims 1-36 stand rejected under 35 USC 102(b) for anticipation by U.S. Patent No. 6,442,706 to Wahl et al.

Applicants respectfully request reconsideration of the rejections.

Referring to the objection to the title, Appellants respectfully submit the title is accurate and in compliance with the CFR. 37 CFR 1.72 states that the title must be as specific and as short as possible. Appellants respectfully submit that the title complies with the requirements of the CFR. In particular, the title corresponds exactly and succinctly to the preambles of the present claims. Accordingly, the title is both specific to the claimed subject matter and also brief. Applicants respectfully assert that the present title is sufficient for indexing, classification and searching. Appellants respectfully request approval of the title as submitted as clearly directly corresponding to the subject matter of the claims, and accordingly, is highly specific and descriptive of the subject matter of the application while also complying with the brevity requirement of the CFR.

Referring to the anticipation rejections, Applicant notes the requirements of MPEP 52131 (8th ed., rev. 5), which states that TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM. The identical invention must be shown in as complete detail in the prior art as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements of the prior art must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Referring to independent claim 1, the data management system comprises a data storage system configured to store data of a plurality of client protected computer systems. Applicants have failed to uncover any reference to a plurality of client protected computer systems as defined in claim 1 in the col. 24 teachings of Wahl relied upon by the Office in support of the rejection. To the contrary, teachings of Wahl are directed towards a single local primary computer system 12 as shown in Fig. 1. The above-recited limitations are not disclosed and claim 1 is allowable for this reason alone.

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Furthermore, Applicants have failed to uncover any teaching in Wahl of the claimed *quantity of data of the protected computer systems to be stored exceeds capacities of individual ones of the storage devices of the data storage system*. The Office has failed to identify teachings regarding the claimed capacities or provide an explanation to the teachings relied upon in support of the rejection. Applicants have electronically searched the entirety of Wahl and have failed to uncover any reference to "capacity." The claimed limitations are not disclosed nor suggested by the prior art and claim 1 is allowable for at least this reason.

In addition, the generic teachings of col. 5 and col. 24 of Wahl fail to teach or suggest *assigning of individual ones of the individual storage devices to store data for respective ones of the protected computer systems*. Applicants have failed to uncover any assignment as claimed. Applicants respectfully submit that claim 1 is allowable for this additional reason.

Applicants respectfully submit that the generic teachings relied upon by the Office fail to teach or suggest numerous limitations of claim 1 and the claim is allowable for these reasons.

Applicants have identified herein numerous claimed limitations which are not disclosed nor suggested by the teachings of the prior art identified by the Office. In the event that a rejection of the claims is maintained with respect to the prior art, or a new rejection made, Applicants respectfully request identification *in a non-final action* of elements which allegedly correspond to limitations of the claims in accordance with 37 C.F.R. §1.104(c)(2). In particular, 37 C.F.R. §1.104(c)(2) provides that *the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified*. Further, 37 C.F.R. §1.104(c)(2) states that the Examiner must cite the best references at their command. *When a reference is complex or shows or describes inventions other than that claimed by Applicants, the particular teachings relied upon must be designated as nearly as practicable*. Applicants respectfully request clarification of the rejections with respect to specific references and specific reference teachings therein pursuant to 37 C.F.R. §1.104(c)(2) in a *non-final Action* if claims 1 is not found to be allowable.

The claims which depend from independent claim 1 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by

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the cited art.

Referring to dependent claim 2, Applicants have failed to uncover a *request or assigning only one of the plurality of storage devices to implement data storage operations with respect to the new protected computer system responsive to the request* in col. 6, lines 34-58 of Wahl. Claim 2 is allowable for this additional reason.

Referring to dependent claim 3, Applicants have failed to uncover in the throttling of col. 15 of Wahl any teaching of the claimed *assigning of one storage device for a new protected computer responsive to monitoring a status of the one storage device*. Claim 3 is allowable for at least this reason.

Referring to dependent claim 4, Applicants have failed to locate teachings in Wahl regarding an archive agent. Applicants have additionally failed to locate teachings in col. 15 or otherwise of the *assigning the one storage device for a new protected computer system responsive to monitoring a processing capacity of an archive agent of the one storage device*. Claim 4 is allowable for this additional reason.

Referring to dependent claim 5, Applicants have failed to locate teachings in col. 15 or otherwise in Wahl of the *assigning the one storage device for a new protected computer system responsive to monitoring a storage capacity of physical storage space of the one storage device*. Claim 5 is allowable for this additional reason.

Referring to dependent claim 6, Applicants have failed to locate teachings in col. 3 or otherwise in Wahl of the *assigning the one storage device which has a greatest available capacity for a new protected computer system*. The teachings regarding the writelog 18 of the primary system 12 fails to teach the limitations regarding the storage devices of the data storage system as claimed. Claim 6 is allowable for this additional reason.

Referring to dependent claim 7, Applicants have failed to locate teachings in col. 5+ of Wahl including Qualix Datastar software of the limitations of *entireties of data of the data for the protected computer systems are stored using respective assigned ones of the storage devices*. Claim 7 is allowable for this additional reason.

Referring to independent claim 16, the teachings in the summary section of

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Wahl at col. 3 regarding the writelog device have not been demonstrated to teach that *a quantity of data of the client protected computer system exceeds individual data storage capacities of individual ones of the means for storing*. Furthermore, the teachings in the summary section of Wahl at col. 3 regarding the writelog device fail to teach or suggest the explicitly claimed *means for assigning individual ones of the means for storing to store data for respective ones of the client protected computer systems*. Positively recited limitations of claim 16 are not disclosed by Wahl and Applicants respectfully submit the Office has failed to establish a proper anticipation rejection for at least this reason. Also, Applicants respectfully submit that the reliance upon teachings of the writelog device 18 being a component of the *primary computer system* of Wahl fails to teach or suggest limitations *regarding individual capacities of the plural means for storing of the data management system or the means for assigning of the data management system*. Applicants respectfully submit that claim 16 is allowable for at least these reasons.

The claims which depend from independent claim 16 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 21, the generic teachings of cols. 23-24 of Wahl relied upon by the Office fail to teach or suggest the claimed *association of individual ones of the protected computer system with respective ones of the storage devices*. The teachings of col. 3 of Wahl fail to disclose the *receiving the request* defined in claim 21. In addition, Applicants have failed to uncover in cols. 5 and 6 of Wahl the *monitoring capacities of the storage devices* as positively claimed. Applicants have electronically searched an entirety of Wahl and failed to uncover any mention of "capacity." Applicants have also failed to uncover teachings of the assigning the new protected computer system to one of the storage devices responsive to monitoring the capacities as claimed. Numerous limitations of claim 21 are not disclosed by the prior art and Applicants respectfully submit that claim 21 is in condition for allowance for at least this reason.

The claims which depend from independent claim 21 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by

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the cited art.

Referring to independent claim 24, Applicants have failed to uncover in col. 24, lines 5-24 of Wahl teachings of the providing *the plurality of storage devices individually comprising processing circuitry and a storage device*. Further, Wahl is void of teachings regarding "capacity" and Wahl fails to teach *monitoring capacities of individual ones of the storage devices which individually comprise processing circuitry and a storage device* as claimed. Applicants have failed to uncover teachings in Wahl of the claimed *associating one of the protected computer systems with one of the storage devices responsive to the monitoring* as claimed. The teachings of col. 24 fail to teach *implementing storage operations of the data for an associated one of the protected computer systems using the associated one of the storage devices in accordance with the associating*. Numerous limitations of claim 24 are not disclosed by the prior art and Applicants respectfully submit that claim 24 is in condition for allowance for at least this reason.

The claims which depend from independent claim 24 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to independent claim 33, the teachings of Fig. 1 fail to teach or suggest the claimed *providing the plurality of storage devices of a data management system configured to store data for plural client protected systems and the storage devices being external of the protected computer systems*. Applicants have failed to uncover *monitoring capacities of the storage devices*. Applicants have failed to uncover teachings of the providing the new storage device or the *coupling of the processing circuitry of the new storage device with the storage control circuitry* as claimed. Numerous limitations of claim 33 are not disclosed by the prior art and Applicants respectfully submit that claim 33 is in condition for allowance for at least this reason.

The claims which depend from independent claim 33 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Applicants submit an information disclosure statement herewith.

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Applicants respectfully submit that the new claims are supported by Figs. 1-3 and the respective specification teachings.

Applicants respectfully request allowance of all pending claims.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

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By:


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